



October 27, 2021

By ECF

Hon. Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Denson v. Donald J. Trump for President, Inc., No. 20 Civ. 4737 (S.D.N.Y.)*

Dear Judge Gardephe:

I write on behalf of Plaintiffs to apprise the Court of a recent development relevant to Ms. Omarosa Manigault Newman's pending motion to intervene in this case, ECF No. 66.

Background and Status of the Case

As the Court knows, this case is a class-action lawsuit brought by Lead Plaintiff Jessica Denson, challenging the validity of Defendant Donald J. Trump for President, Inc.'s (the "Campaign") form nondisclosure agreement (the "Employment Agreement"). *See* ECF No. 1-1. The Employment Agreement purports to prohibit anyone who signed it from disparaging Donald Trump, his family, and their businesses for the rest of their lives, as well as from disclosing any information that Donald Trump unilateral deems confidential for the rest of their lives. *Id.* Plaintiffs believe the Campaign required all of its staff, contractors, and volunteers to sign the Employment Agreement in the 2016 election cycle. *Id.*

On March 30, 2021, the Court held that the Employment Agreement's nondisclosure and non-disparagement provisions are invalid and unenforceable under New York law. ECF No. 48. That decision currently only applies to Ms. Denson, as the class has not yet been certified; and the Court initially denied Plaintiffs' request for an injunction, as Plaintiffs inadvertently omitted to request injunctive relief in their initial complaint. *See id.* at 34–35 & n. 10.

Plaintiffs subsequently filed a motion seeking leave to amend their complaint to add a request for injunctive relief, which has been fully briefed and is pending before the Court. *See* ECF Nos. 51, 54–56, 60, 63. Meanwhile, the Campaign suggested that the case could not proceed to class discovery, and the Court ordered the parties to brief that issue. *See* ECF Nos. 49–50, 53, 59, 61–62, 64–65. That issue is also pending before the Court.

Subsequently, on June 10, 2021, Ms. Manigault Newman filed a motion to intervene in this case. ECF Nos. 66–67. Ms. Manigault Newman argued, in part, that she should be permitted to intervene because she was then subject to a years-long, ongoing arbitration in which the Campaign sought to enforce the Employment Agreement's nondisclosure and non-disparagement provisions against her. *See* ECF No. 67 at 5–11. Plaintiffs submitted a letter taking no position on the motion, noting only that intervention might delay resolution of this case. ECF No. 68. The Court subsequently ordered the parties to file responses to Ms. Manigault Newman's motion, if any, by June 25, 2021. ECF No. 69. Plaintiffs rested on their letter, while



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the Campaign opposed intervention, ECF No. 70. Ms. Manigault Newman filed a reply on July 2, 2021, ECF No. 71, and the intervention motion is pending before the Court.

Arbitrator's Ruling

On September 24, 2021, the arbitrator in the Campaign's enforcement proceeding against Ms. Manigault Newman issued a ruling, citing this Court's decision and holding that the Employment Agreement's nondisclosure and non-disparagement provisions are unenforceable. A true and correct copy of that decision, which was first reported by *The New York Times* on September 28, 2021,¹ is attached as Exhibit A to this letter. Although Plaintiffs take no position on the motion to intervene, they write to apprise the Court of the arbitrator's decision as it likely bears on the Court's analysis of that motion and does not appear to have been brought to the Court's attention.

Respectfully submitted,

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¹ Maggie Haberman, *Trump Loses Case to Enforce Omarosa Manigault Newman's N.D.A.*, N.Y. Times (Sept. 28, 2021), <https://www.nytimes.com/2021/09/28/us/politics/trump-omarosa-nda-suit.html>.